

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

HEATHER SMITH, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

WHALECO INC. DBA TEMU,

Defendant.

Case No. 5:23-CV-00559-D

CLASS ACTION

PLAINTIFF’S CORRECTED NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Heather Smith, individually and on behalf of all others similarly situated, submits this Notice of Supplemental Authority regarding Defendant Whaleco, Inc. d/b/a Temu’s (“TEMU”) Motion to Compel Arbitration (Dkt. 11, 12):

1. On October 13, 2023 a court of the Middle District of Florida issued an opinion on a motion to compel arbitration brought by Whaleco, Inc involving the arbitration provision at issue in Defendant’s Motion to Compel arbitration (Dkts. 11 and 12). *See Johnson v. Whaleco, Inc.*, Case No. 5:23-cv-403-GAP-PRL (M.D. Fla. Oct. 13, 2023) (a copy of the decision is attached as **Exhibit A** hereto).

2. Pursuant to LCvR7.1(m), Plaintiff avers that this newly-issued authority is relevant to Defendant Whaleco, Inc.’s terms of use on its website at issue here. *See* Plaintiff’s Opposition to Defendant’s Motion to Compel Arbitration, Dkt. 21, at pp. 8-24 (discussing whether Defendant establishes that an agreement was formed between the parties based on Defendant’s terms of use).

Respectfully submitted,

/s/ Kathy R. Neal

Mary Quinn-Cooper, OBA # 11966

Kathy R. Neal, OBA #674

McAFEE & TAFT, P.C.

Williams Center Tower II

Two W. Second Street, Suite 1100

Tulsa, Oklahoma 74103

Telephone: 918-587-0000

Facsimile: 918-599-9317

Maryquinn.cooper@mcafeetaft.com

Kathy.neal@mcafeetaft.com

E. Powell Miller

THE MILLER LAW FIRM, P.C.

950 W. University Drive, Suite 300

Rochester, MI 48307

Telephone: 248-841-2200

epm@millerlawpc.com

Counsel for Plaintiff and the Putative Class

CERTIFICATE OF ELECTRONIC SERVICE AND FILING

I hereby certify that on this 19th day of October 2023, I caused the foregoing instrument to be filed with the Clerk of the Court using the ECF System for filing, with electronic service to be made via CM/ECF to those registered participants of the ECF System.

/s/ Kathy R. Neal